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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,011

11/14/2003

Robert Poncelet

COS-899 (AIP-1092US)

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EXAMINER

TESKIN, FRED M

ART UNIT

PAPER NUMBER

1713

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/714,011

**Applicant(s)**

PONCELET ET AL.

**Examiner**

Fred M. Teskin

**Art Unit**

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

Art Unit: 1713

This Office action is responsive to the reply of November 1, 2006. Claims 1-16 and 18-26 are currently pending and under examination herein.

The prior art rejection based on Joseph has been reconsidered and is withdrawn primarily because the patentee's propylene polymer composition is prepared by a procedure that differs from applicants' in that a blend composition including a high melt index plastomer is subject to visbreaking (per col. 6, ll. 55-66); whereas in the present invention, no plastomer is blended with the polymer resin that undergoes visbreaking. However, upon further consideration, new grounds of rejection are made as detailed below.

The disclosure is objected to because of the following informalities: In Table 2 (page 15), the 5720 resin is identified as "Control", which implies a non-inventive embodiment, yet it appears to fall fully within the scope of the claims. That is, based on the properties reported in the table, the "Control" meets the claim limitations as to maximum load, melt flow rate, total energy and flexural modulus. It is therefore unclear in what respect(s) the "Control" resin is intended to differ from the applicants' invention.

Clarification at least by way of explanation is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The lack of proper antecedent basis for the amended

Art Unit: 1713

temperature ranges as recited in claims 1, 4-16, 25 and 26; e.g., "temperature greater than ... about  $-40^{\circ}\text{C}$ " (claim 1) and "temperature greater than ... about  $-30^{\circ}\text{C}$ " (claims 25 and 26, among others). Cf., paragraphs 0004-0006 of the Specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22, 25 and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 02/20628 A1.

WO '628 discloses polypropylene heterophasic copolymers exhibiting simultaneously high melt flow index and high impact strength. The copolymers are further characterized by very high impact resistance over a large range of temperatures and by a controlled rheology (see page 10, lines 9 *et seq.*).

Polypropylene heterophasic copolymers meeting the claim limitations as to melt flow rate and flex modulus as well as ethylene content are detailed in the working examples. See in particular Example I and Table II, wherein MFI (g/10')/flex modulus

Art Unit: 1713

(MPa) values of 12/1120; 24.7/1065; and 37.9/1036 are reported for samples of polypropylene heterophasic copolymer having an ethylene content of 11.3 wt% and degraded by consumption of cyclic peroxide in amounts of 700, 900 and 1380 ppm, respectively. While applicants' claims use the term "melt flow rate" instead of "melt flow index," as reported in the reference, the present specification uses the two terms interchangeably and defines them by various standards including ASTM D1238 and ISO 1133. (Specification, paragraph 0017.) The latter standard is used in WO '628 (see page 5, lines 23-25) and the test conditions reported therein (i.e., temperature and load) are identical to those used by applicants.

Further with respect to claims 1, 25 and 26, the claim recitations of "about 15 g/10 min" and "about 1,100 MPa" are considered to read on the reference values of MFI and flex modulus noted above. The word "about" does not have a universal meaning in patent claims and must be construed in light of the technological facts of each case. *Pall Corp. v. Micron Separations, Inc.*, 36 USPQ2d 1225, 1229 (Fed. Cir. 1995). Instantly, there is no evidence that "about 15" or "about 1,100" would not cover values that are somewhat lower than precisely 15 g/10 min or precisely 1,100 MPa.

Accordingly, WO '628 discloses all the positive claim limitations but for maximum load and total energy absorbed under the specified impact test, as to which the reference is silent. However, where the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness is established. *In re Best*, 195 USPQ 430, 433 (CCPA 1977).

Art Unit: 1713

In this case, the polypropylene heterophasic copolymers described in the cited examples of WO '628 were prepared by a substantially identical process to applicants'; that is, by copolymerization in two successive reactors followed by degradation with a cyclic ketone peroxide in an extruder. See page 7, lines 24+ and page 8, lines 15+ of the reference. Reference Example 1 reports an extrusion temperature of 200°C as well as cyclic peroxide consumption amounts of 700, 900 and 1380 ppm, corresponding to final MFI values of 12, 24.7 and 37.9 g/10'. The instantly claimed copolymer is similarly prepared via a sequential, two-reactor polymerization of propylene and ethylene and its melt flow rate subsequently increased, as by mixing the polymer resin with peroxide material in concentrations of from about 50 to about 10,000 ppm by weight, prior to adding to an extruder where the mixture may be processed at a temperature of about 177°C to about 288°C. (Specification, paragraphs 0011, 0018 and 0019.)

In view of the similarity in preparation procedure and the identity of common properties (i.e., copolymer composition, melt flow index and flex modulus), there is a plausible basis for inferring that the undisclosed impact-related properties of the claimed copolymer are intrinsic features of the cited embodiments of WO '628. Where, as here, there is sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. *In re Spada*, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Art Unit: 1713

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '628, in view of the acknowledged state of the prior art as set out in paragraphs 0002 and 0003 of the present specification.

The discussion of WO '628 set out in the preceding rejection is incorporated herein by reference. The reference generally teaches utility of its inventive copolymers in applications including automotive parts and as injection molding material. See, page 9, lines 26-30 and page 16, lines 21-24 of WO '628. The particular articles claimed herein, *viz.*, automobile interior trim components and an automobile dashboard, are not mentioned.

However, as acknowledged in the background section of the present specification, a class of propylene polymers termed impact copolymers has been developed to meet the specialized needs of vehicle interiors such as interior trim components and dashboards. The stated aim of WO '628 is to provide polypropylene heterophasic copolymers exhibiting simultaneously high melt flow index and high impact strength. This combination of properties is represented as an improvement over the impact polypropylene copolymers of the prior art. (WO '628, page 4, ll. 5-11). As such, one of ordinary skill would have perceived the reference copolymers to be at least equivalent, if not superior to the known class of impact copolymers in terms of utility in such recognized applications as manufacturing vehicle interior components like trim and dashboards. Thus, consideration of WO '628 together with the acknowledged prior art would have rendered obvious the subject matter of claims 23-24 to one having ordinary skill in the art at the time of applicants' invention.

Art Unit: 1713


Applicants' arguments with respect to claims 1-16 and 18-26 have been fully considered but are moot in view of the new grounds of rejection.

No claims are allowable at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
FRED TESKIN  
PRIMARY EXAMINER  
1713

FMTeskin/01-17-07